IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 194 OF 2005

Shri Sudhir Bhagat
(presently in custody
at Sub Jail, Sada,
Vasco da Gama, Goa) ... Applicant

versus

State, through the
Public Prosecutor. ... Respondent

Mr. S. G. Bhobe, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 20TH OCTOBER,2005.

ORAL ORDER

Heard Mr. S. G. Bhobe, the learned Counsel appearing on behalf of the applicant/A-4-Sachin Parab. The applicant is accused no.4 in Sessions Case No.15/2005 who has now given his name as Sudhir Bhagat and earlier when he was arrested by the Police, as Sachin Parab.

2. Charge against the applicant/A-4-Sachin Parab along with the other accused has already been framed by the learned Sessions Judge, Margao and after an application for bail filed by him was rejected by Order dated 6-8-2005, the applicant/A-4-Sachin Parab has approached this Court for bail.

3. The case of the prosecution is that the accused in furtherance of a criminal conspiracy abducted Dr. Shrikant Verenkar when he was proceeding for a morning walk on 17-1-2005 by pushing him into a Maruti Car bearing No.GA-01-C-0055 in place of the original plate No.GA-01-R-1859 and subsequently murdered him by smothering and compressing his neck and testicles and thereafter threw away the dead body at a lonely place near a hill at Cansaulim.

4. In the course of investigations, the statement of the applicant/A-4-Sachin Parab was recorded under Section 164 of the Code of Criminal Procedure, 1973 on or about 23-2-2005 but in the said statement the applicant/A-4-Sachin Parab did not incriminate himself. A similar statement or confession was also recorded of A-5/Pratham Gadhagkar on or about 3-2-2005 and

thereafter the said A-5/Pratham Gadhagkar has turned into an approver and has been granted pardon by Order dated 6-8-2005 by the learned Sessions Judge.

5. Apparently, the mastermind behind the conspiracy in committing the murder of the deceased Dr. Shrikant Verenkar was none other than A-1/Ryan Fernandes who is the son-in-law of the said deceased. The relations between the deceased father-in-law and accused no.1 son-in-law were strained and not only that, the relations between A-1/Ryan Fernandes and his wife were also strained and the latter was not residing with the former on account of strained relationship. The pushing of the deceased in the said Maruti Car bearing No.GA-01-C-0055 was noticed by one of the passers-by who lodged a report to Police and which was registered as Crime No.9/05 under Section 365 r/w 34 I.P.C. and subsequently after the dead body of the deceased was found and the cause of death was established by post mortem report, Sections 302 I.P.C., 120-B I.P.C. and 201 I.P.C. were added to the said crime.

6. The learned Sessions Judge in cursorily rejecting the

application for bail of the applicant/A-4-Sachin Parab has observed that this crime had sent shock waves in the State of Goa and further observed that the offences committed by the accused were heinous in nature. The learned Sessions Judge did not at all consider what was the evidence against the applicant/A-4-Sachin Parab in the said criminal conspiracy and ultimately in commission of murder. One does not know on what basis the learned Sessions Judge measured the so-called shock waves which were produced in the State of Goa as a result of the murder. Possibly, the learned Sessions Judge was carried away by the news reports of the said murder appearing in the print media but Courts cannot go by such news as a seismograph to measure shock waves. More often than not newspapers in order to sell themselves, sensualise such stories. The only seismograph to be used in matters of grant or refusal of bail are the time tested principles which have been reiterated time and again by the Supreme Court in various Judgements, foremost being the gravity of the offence that is to say more heinous is a crime, the greater is the chance of rejection of the application for bail, the severity of the punishment, if the accusation entails a conviction, the nature of evidence in support of the accusations. Reasonable apprehensions of the

witnesses being tampered with or the apprehension of there being a threat for the complainant, etc. are other relevant considerations. In matters of bail in non bailable cases the considerations are always one too many. The order refusing bail to the applicant/A-4-Sachin Parab does not disclose as to why the applicant/A-4-Sachin Parab has been bracketed along with other accused. At the stage of considering a bail application Courts are required to give reasons in support of the Order granting or refusing bail, though elaborate documentation of the merits of the case is not to be undertaken.

7. At the time of hearing of this application, Mr. S. G. Bhobe, the learned Counsel after taking me from what the applicant/A-4-Sachin Parab stated in his said confessional statement recorded on 23-2-2005 onwards has submitted that the applicant/A-4-Sachin Parab was an employee of A-1/Ryan Fernandes and if at all the applicant/A-4-Sachin Parab went to Mumbai, it is because A-1/Ryan Fernandes told him that he would follow the applicant/A-4-Sachin Parab. Mr. Bhobe has also referred to the instructions issued by the Sub Divisional Police Officer dated 30-1-2005 and has submitted that after reaching Mumbai, the applicant/A-4-Sachin Parab had telephoned A-1/Ryan Fernandes to inquire about his arrival in Mumbai as promised. The contention of Mr. Bhobe, therefore, is that the

applicant/A-4-Sachin Parab had no role to play in the said conspiracy and, therefore, the contention of the prosecution that the applicant/A-4-Sachin Parab had proceeded to Mumbai so as to create an alibi for A-1/Ryan Fernandes, prima facie, cannot be accepted. Mr. Bhobe, has further submitted that A-1/Ryan Fernandes did not share his plans with the other accused as can be seen from the investigation papers and although, the case papers otherwise disclose that the applicant/A-4-Sachin Parab went in search of a snake, the applicant/A-4-Sachin Parab did not even know whether the said snake was to be used in the commission of the said murder of the deceased.

8. The claim of the applicant/A-4-Sachin Parab that he was the employee of A-1/Ryan Fernandes appears to be of his own but on the contrary the case papers disclose that the applicant/A-4-Sachin Parab was known to A-1/Ryan Fernandes for almost 3 years prior to the incident and although, the first attempt to commit the murder of the deceased was executed on 14-1-2005 which failed, the applicant/A-4-Sachin Parab was moving about with A-1/Ryan Fernandes as his shadow from 20-12-2004 till the time the applicant/A-4-Sachin Parab proceeded to Mumbai on the same day on a ticket purchased in the name of A-1/Ryan Fernandes by Konkan Kanya. It can be seen from the confessional statement of A-5/Pratham

Gadhagkar, now turned into an approver that on 20-12-2004 the applicant/A-4-Sachin Parab called the said A-5/Pratham Gadhagkar and told him that he(the applicant) and A-1/Ryan Fernandes would come to meet him and accordingly A-1/Ryan Fernandes and A-4/Sachin Parab/Sudhir Bhagat met at about 9 p.m. when A-1/Ryan Fernandes told A-5/Pratham Gadhagkar about a plan that someone had approached A-1/Ryan Fernandes and asked him to steal a car which was to be used to dash against another car near a sloppy hill so that the driver of the other car should be killed and that that should appear like a natural accident to the driver/owner of the said other car and the said stolen car ought to be sprinkled with alcohol so as to give an impression that it was being driven by a drunken person. A-5/Pratham Gadhagkar was also told that the person would pay Rs.40,000/- out of which Rs.30,000/- would be given to A-5/Pratham Gadhagkar and Rs.10,000/- would be retained by him as his share.

9. On 28-12-2004, the applicant/A-4-Sachin Parab again rang the said A-5/Pratham Gadhagkar and they met him again. At this time, A-1/Ryan Fernandes and A-4/Sachin Parab came on a two wheeler and A-5/Pratham Gadhagkar was told of yet another plan namely, that A-5/Pratham Gadhagkar had to pose as a salesman/marketing executive

and by assuming that his name would be Nilesh Naik to offer a juice to a gentleman at Margao which would contain black magic and once the said juice was taken the person so administered with the juice would follow all the instructions as desired by the person who prepared the said juice and for that A-5/Pratham Gadhagkar was offered Rs.3000/- of which he was promised Rs.1000/- to be paid in advance and the balance after execution of the plan and after the said plan was disclosed, all 3 namely, A-1/Ryan Fernandes, A-4/Sachin Parab and A-5/Pratham Gadhagkar dispersed, after taking dinner at Alua Bar and Restaurant. On 31-12-2004, all 3 met again near three buildings at Porvorim and that this time, A-3/Rajendra alias Rajan Singh was also present. On 2-1-2005, A-3/Rajendra alias Rajan Singh informed A-5/Pratham Gadhagkar that A-1/Ryan Fernandes would come to collect A-5/Pratham Gadhagkar from Sagar Hotel and accordingly A-5/Pratham Gadhagkar went there. On 4-1-2005, the applicant/A-4 gave a ring to A-5/Pratham Gadhagkar and thereafter A-1/Ryan Fernandes and the applicant/A-4-Sachin Parab went to the house of A-5/Pratham Gadhagkar and from there proceeded to Mapusa where certain bags were purchased and a rubber stamp was ordered to be made. Presumably, these bags were to be used by A-5/Pratham Gadhagkar while posing himself as a sales executive. Thereafter, after taking lunch, all 3 of them went to the Office of A-1/Ryan Fernandes at City Centre Building and then went to the flat of the

father of A-1/Ryan Fernandes at Tonca where the bags were kept and thereafter proceeded to Miramar and then returned to Porvorim at which time, A-4/Sachin Parab collected a parcel given by Raya Khandolkar in a bag. Presumably, the said bag contained Dhatura seeds asked for by A-1/Ryan Fernandes for medicinal purposes, and, thereafter they proceeded to Sangolda and from there to Candolim where A-1/Ryan Fernandes purchased Soya milk of Hindustan Lever Ltd. with different flavours and then returned to Sangolda where 4 of them took alcohol drinks at Alua Bar and Restaurant and A-1/Ryan Fernandes and A-4/Sachin Parab dropped A-5/Pratham Gadhagkar at his residence at about 11.30 p.m. with a promise that he would be picked up again at about 6.30 p.m. on 5-1-2005. On 5-1-2005, A-1/Ryan Fernandes and A-4/Sachin Parab went to the residence of A-5/Pratham Gadhagkar and thereafter they proceeded to the flat of the father of A-1/Ryan Fernandes where A-1/Ryan Fernandes briefed A-5/Pratham Gadhagkar as to how he should act as a marketing executive and offer the juice to the person who would be identified later and again A-1/Ryan Fernandes and A-4/Sachin Parab dropped A-5/Pratham Gadhagkar at his residence at St. Inez. Thereafter, all 3 namely, A-1/Ryan Fernandes, A-4/Sachin Parab and A-5/Pratham Gadhagkar continued to meet on 6-1-2005, 7-1-2005 and 8-1-2005 and A-5/Pratham Gadhagkar was possibly being trained in the said flat at Tonca as to how A-5/Pratham

Gadhagkar should pose himself as a salesman/marketing executive and offer the juice with black magic whose identity would be disclosed later. On 9-1-2005, all 3 met again at Tonca flat where the applicant/A-4-Sachin Parab gave A-5/Pratham Gadhagkar a black pant to wear and thereafter they proceeded to the Office of A-1/Ryan Fernandes at Patto and thereafter, after lunch they proceeded to Vasco and on the way A-1/Ryan Fernandes is stated to have told A-5/Pratham Gadhagkar that the businessman was not from Margao but from Vasco da Gama and on reaching Vasco da Gama, A-1/Ryan Fernandes showed to A-5/Pratham Gadhagkar the clinic of Dr. Shrikant Verenkar describing the latter as a doctor and businessman and while the applicant/A-4-Sachin Parab and A-1/Ryan Fernandes waited in the car, A-5/Pratham Gadhagkar with Soya Milk in the executive bag went to the said clinic but as Dr. Verenkar was not there he returned back to the car and after some time A-5/Pratham Gadhagkar went again to Dr. Verenkar's clinic where A-5/Pratham Gadhagkar introduced himself as marketing executive of Express Marketing Pvt. Ltd., doing the business of supplying juices of various flavours and offered him in a plastic cup the juice from the cardboard box which A-1/Ryan Fernandes had given him and Dr. Verenkar took 100 ml. of the juice and as Dr. Verenkar was not interested in purchasing one litre cardboard box of juice, A-5/Pratham Gadhagkar returned back to the car where A-1/Ryan Fernandes and the

applicant/A-4-Sachin Parab were waiting for him. On the way, A-1/Ryan Fernandes told A-5/Pratham Gadhagkar that he had Dhatura seeds ground, powdered and mixed with the juice and had injected the same from the bottom which later on he had sealed, and, A-5/Pratham Gadhagkar was further told by A-1/Ryan Fernandes that once such a juice was taken, the person gets completely mad and throughout his life he has to spend in mental asylum. Thereafter, they returned to the Tonca flat at about 6 p.m. On 10-1-2005, i.e. to say on the next day, A-5/Pratham Gadhagkar was paid Rs.1000/- by A-1/Ryan Fernandes and was told by the latter that he would ring Dr. Verenkar on phone to find out the effect of the Dhatura mixed juice administered to him and if the desired effect had taken place he would be paid the balance of Rs.2000/- as promised earlier. At this time, the applicant/A-4-Sachin Parab was present along with A-1/Ryan Fernandes and the latter gave to the applicant/A-4-Sachin Parab and A-5/Pratham Gadhagkar one litre cardboard box of the said juice. On 11-1-2005, the applicant/A-4-Sachin Parab and A-5/Pratham Gadhagkar went to the jungle in search of a snake but the snake was apparently found by A-5/Pratham Gadhagkar on 12-1-2005 when he went along with his wife but it was caught in the absence of his wife and the snake was handed over to A-1/Ryan Fernandes on 13-1-2005. On 14-1-2005, A-1/Ryan Fernandes and A-5/Pratham Gadhagkar went to Vasco da Gama and followed Dr. Shrikant

Verenkar who was on his morning walk and thereafter returned and thereafter in the evening both of them went to Karmali Railway Station where A-1/Ryan Fernandes purchased one railway ticket to go by train to Mumbai and accordingly, the applicant/A-4-Sachin Parab went to Mumbai on 14-1-2005 at about 6.30 p.m. from Karmali Railway Station. On 15-1-2005, A-1/Ryan Fernandes, A-2/Francis D'Sa and A-3/Rajendra alias Rajan Singh and A-5/Pratham Gadhagkar met at the Tonca flat. At about 9 p.m., when A-5/Pratham Gadhagkar is stated to have removed the teeth of the said snake by a cutter so that A-5/Pratham Gadhagkar wanted to have a feeling that Dr. Verenkar should not be killed by a bite of the snake which he had caught. On 17-1-2005, all the accused except A-4/Sachin Parab went to Vasco da Gama and saw Dr. Verenkar on his morning walk and thereafter A-3/Rajendra alias Rajan Singh caught hold of Dr. Verenkar, A-2/Francis D'Sa, opened the left side of the van and A-3/Rajendra alias Rajan Singh pushed Dr. Verenkar inside the van and A-2/Francis D/Sa put him in and A-3/Rajendra alias Rajan Singh jumped over him and kept him pressed with his face to the ground. First a snake bite was tried and as that did not succeed then his heart was pressed as Dr. Verenkar was a heart patient and as that also did not work ultimately a cloth was put on his face. He was suffocated and was thus murdered.

10. Although, the applicant/A-4-Sachin Parab was not present at the time of the commission of the actual murder of the deceased on 17-1-2005, he was certainly present at the early stages of planning and when the first plan was executed by administering Dr. Verenkar with Soya Milk mixed with powdered Dhatura seeds. The materials on record do show that the applicant/A-4-Sachin Parab was not an employee as such as claimed by the applicant/A-4-Sachin Parab but was a close friend of his and was moving with him, as already stated from 20-12-2004 till he went to Mumbai on a ticket purchased by A-1/Ryan Fernandes on his own name. One fails to understand as to how the Investigation Officer gave a copy of the instructions dated 30-1-2005 issued by the Sub Divisional Police Officer to the accused along with the copies of the charge-sheet since such instructions are not at all required to be given to the accused. It is quite probable that A-1/Ryan Fernandes had told the applicant/A-4-Sachin Parab that he should proceed ahead and that A-1/Ryan Fernandes would follow him but in the light of the facts herein above stated which clearly disclose that the applicant/A-4-Sachin Parab was very much a part of the execution of the first plan of administering Soya Milk with powdered Dhatura seeds to the deceased it cannot be said that the applicant/A-4-Sachin Parab had no role to play in the said conspiracy though the applicant/A-4-Sachin Parab was not otherwise present on the day when the conspiracy regarding the

murder of deceased Dr. Verenkar was actually executed. A person taking part in a conspiracy need not take part in each and every act resulting in the murder of the deceased. The materials on record clearly show that the applicant/A-4-Sachin Parab was very much one of the conspirators and took part in execution of the first plan which failed. One does not know on what basis that Goltekar, the Sub Divisional Police Officer of Vasco da Gama stated that the applicant/A-4-Sachin Parab had called from Mumbai to A-1/Ryan Fernandes on his mobile to inquire about the arrival of the latter in Mumbai, as promised. The facts stated herein above prima facie indicate that the applicant/A-4-Sachin Parab was very much one of the conspirators along with A-1/Ryan Fernandes in the first plan which failed. That the last plan was executed in the absence of the applicant/A-4-Sachin Parab certainly is not sufficient to point out to his innocence or being implicated falsely. Generally, it is not necessary that every conspirator should do an overt act in furtherance of the conspiracy in order to constitute an indictable offence. Encouragement and support which co-conspirators give to one another rendering enterprises possible which if left to individual effort would have been impossible, furnish the ground for visiting the conspirators and abettors with adequate punishment. The role of the applicant/A-4-Sachin Parab, in the aforesaid circumstances stated herein above cannot at all be said to be insignificant. Prima facie, he was very much a part of the

conspiracy to murder the deceased. The offence alleged against him is serious. The punishment could also be grave. There is prima facie evidence against him to connect him with the conspiracy.

11. In the light of the above, the applicant/A-4-Sachin Parab would not be entitled to bail. Hence, the application for bail is hereby rejected.

N. A. BRITTO, J.

RD.